

22nd April, 2015

**Additional views of ADR/NEW on Political Finance
And the 255th Report of the Law Commission of India**

To

The Election Commission of India

New Delhi

By

Association for Democratic Reforms (ADR), and

National Election Watch (NEW)

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Association for Democratic Reforms (ADR), through its Founder-Trustee, Prof. Jagdeep Chhokar had submitted ADR/NEW's views on the Report by the Law Commission of India on Electoral Reforms (the 255th report, March 2015) and the Election Commission of India's Background Paper on Political Finance. The same is appended for reference.

This paper, dated 22nd April, '15, recommends the following additional reforms that should also be considered by both the Commissions:

1. Auditing of accounts of political parties:

- a. ICAI guidelines¹, on auditing of political parties which was also endorsed by the ECI in order to improve transparency in the finances of political parties, remain guidelines only and have not been actively taken up by the political parties as a mandatory procedure to disclose details of their income. These guidelines were meant to standardize the format of financial statements of parties apart from improving disclosure of income, expenditure, assets and liabilities of the unique association, political parties. Details of disclosure included:
 - i. Classification and disclosure of details of donors (individuals, companies, institutions and others);
 - ii. Revenue from issuance of coupons of different denominations to be disclosed separately;
 - iii. Computation of income/ expenditure by Accrual method of accounting and not cash-flow method of accounting, where the former method provides more scope of transparency;
 - iv. Valuation of fixed assets, annually, to have a clear idea of appreciation/ depreciation.
- b. Changing of auditors every three years:
 - i. The amended Companies Act, 2013², which came into force on 29th Aug, 2013, stated that no Company shall have an auditor for more than 5 years but this rule was not applied for political parties. Once a firm/person is responsible for

auditing of accounts of parties, there is a possibility that finances of parties could be made as opaque as possible.

- ii. Indian laws do not permit foreign auditing firms to operate directly in India but might have a tie-up with domestic auditing firms. This becomes a worrisome factor if the domestic firm is auditing Indian parties' accounts. By having no provision to change auditors frequently, foreign companies might have a bird's eye view of the parties' internal accounting.
 - iii. The accounts of political parties should be "audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General." This differs from the current practice where political parties choose their auditors entirely on their own.
- c. As the income-expenditure statements of political parties are assessed rarely (even those of National Parties), authenticity of the accounts submitted remains doubtful. When the authenticity is not verified, the auditors who might be under-reporting the accounts, remain out of purview of punishment. With online submission of IT Returns, political parties do not submit details of income, expenditure and assets and liabilities as attachments. Thus, the IT department too does not have enough information on the finances of political parties!
 - d. Section 78A, which was introduced in the 170th Law Commission Report, should be actively taken up as the suggested Section also proposed penalty for those parties defaulting on the maintenance of accounts.
 - e. Similar to Section 276CC of the IT Act which penalizes individuals who fail to submit their IT returns, similar legal provisions should be applicable to political parties too.

2. Disclosure of details of donors:

Today, political parties are not required to disclose the source of any contribution or donation which is less than Rs. 20,000. There are instances of parties who declare donations worth hundreds of crores (yes, hundreds of crores), claim and get income tax exemptions on that, and do not disclose the source claiming that each of the donations was less than Rs.20,000. The report recommends that political parties "*disclose such particulars (the names, addresses and*

PAN card numbers of these donors along with the amount of each donation) even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or 20% of the party's total contributions, whichever is less." It recommends consequential amendments to be made to the Conduct of Election Rules and the Income Tax Act.

ADR recommends the following regarding disclosures of political donations

- a. Details of donors who donated above Rs 20,000: The contributions reports, filed under Form 24A by the political parties, should be accepted only if all the sections have been duly filled (including mode of payment, details of cheque/ DD/ others and PAN of the donor, if available). The purpose of Section 29D on disclosure of donation received by political parties will not be served if partial information is concealed by the parties. If the contribution reports are returned, it would result in taxable income and that should be deterrent from providing incomplete donor information.
- b. Sale of coupons by parties amount to huge income but do not fall under 'contributions/voluntary donations'. Thus, Section 29D should also include 'income from sale of coupons' where the details of those who purchased coupons with denomination above Rs 10,000 should be disclosed.
- c. Section 29E states that the donation reports submitted by the political parties should be maintained on file by the ECI for 3 years. It would be prudent to state that the information should be saved in softcopy before the files are discarded/ destroyed.

3. Election Expenditure Statements by Political Parties:

Political parties today are very lax about submitting their election expenditure statements within the specified time limit set by the Election Commission of India.

- a. The Law Commission report recommends that *"Express penalties, apart from losing tax benefits, should be imposed on political parties ... for the non-compliance with the disclosure provisions of proposed section 29D of the RPA. This should include a daily fine of Rs. 25,000 for each day of non-compliance, with the possibility of de-registration if the default continues beyond 90 days. Further, ECI may levy a fine of up to Rs. 50 lakhs if its finds any particulars in the party's statements as having been falsified."* ADR is in complete agreement with the suggestion of the Law Commission.

- b. The Hon'ble Supreme Court had, in various judgements, held that under Article 324 of the Constitution, the ECI has sufficient powers to give effect to the recommendations of the Law Commission.

4. Election expenditure of contesting Candidates:

- a. **Third Party expenditure:** The expenditure incurred by individuals/well-wishers or corporations other than the candidate himself/ herself, should be included in the election expenditure of the candidate if it directly or indirectly (through general party propaganda) benefits the election campaign of the said candidate.
- b. **Disclosure of Election Expenditure:** Candidates are required to keep a true copy of account of election expenditure in the form of a daily register from the date of nomination to the last day of campaigning. They are currently required to submit their election expenditure details to the District Election Commissioner within 30 days of the declaration of the election results. This period can be reduced to 15 days as candidates often submit their election expense details on the very last date of deadline and it gives a very short time for citizens to file election petitions (the deadline for filing an election petition is 45 days from the date of election).
- c. **Penalty on candidate for failure to lodge election expenses:** Failure to lodge election expenses within the stipulated time period should lead to disqualification of the candidate for at least 5 years and one term of election, from the current penalty of disqualification of the candidate for three years.
- d. **Tax benefits** are only provided if the individual or company donates to a political party. There are no tax exemptions if you donate to a candidate. There is no guarantee that the political party will distribute contributions in a transparent manner. This makes it quite difficult for clean and honest candidates to raise funds for election purposes on their own as there are no incentives for the contributors and thus wealthy and influential candidates are given tickets by parties as they have their own funds to spend and does not require any funds from the party. In fact, they are also able to donate huge amounts of money to the party through both legal and illegal channels.

- e. **Disclosure of sources of funds for candidates:** It should be mandatory for the candidate to disclose the name, address, form of payment and PAN details of the donor (source of funds) in schedule 7 to 9 of the expenditure statement. Non-disclosure of these details should lead to strict penalty.

5. Electoral Trusts:

The Commission makes significant observations on the functioning of electoral trusts. It recognizes that while *“The IT Act has been amended to provide for tax relief on donations to the electoral trusts, setup for the sole purpose of making donations to political parties and ... the ECI regulates electoral trusts as well through its ‘Electoral Trust Companies’ scheme ..., there is no disclosure provision under the RPA corresponding to the changes in the income tax laws. Additionally, the only penalty prescribed non-submission of an annual report of contributions to the ECI as per the prescribed format (detailing the names and addresses of donors and donations given to parties), before the due date of filing of tax returns is that ‘adverse notice shall be taken’ of the failure to comply with the instructions.”* The Law Commission therefore recommends introduction of a new chapter pertaining to the ‘Regulation of Electoral Trusts’, to provide for the regulation of electoral trusts with appropriate penal provisions for enforcement in case of default.

Other observations regarding Electoral Trusts are follows

- a. ‘Electoral Trusts Companies’ scheme should be amended to have a retrospective effect in order to have the donor details, income and expenditure details of those Electoral Trusts which were formed before January, 2013.
- b. 6 Electoral Trusts had donated a total amount of Rs 105 crores to the National Parties between FY 2004-05 and 2011-12, before the transparency rules governing contributions to Electoral Trusts were formulated by the Central Government. As the rules are not retrospective, these 6 Electoral Trusts are not required to follow the transparency rules and declare their donor details. Thus, details of donors to these 6 Electoral Trusts remain unknown thereby leading to speculation on whether donations to these Trusts was only a means of getting tax exemption or a way to convert black money stashed in tax havens to white money in India.

- c. Scrutiny of details provided by the Electoral Trusts is as important as the assessment of IT Returns of political parties. Thus, there should be a provision for frequent scrutiny of contribution reports filed by the Electoral trusts.
- d. The names of Electoral Trusts, currently, do not indicate the name of the Company/ group of companies which set up the Trusts. In order to have greater transparency regarding details of corporates which fund political parties, it would be ideal to include the name of the parent company in the name of the Electoral Trust. The new part IVB of Section 29 of the RPA should be appropriately amended.

6. Political Advertisements and Paid News

Section 127A of the RPA may be suitably amended, adding a new sub-section to the effect that in the case of any advertisements/election matter for or against any political party or candidate in print media, during the election period, the name and address of the publisher should be given along with the matter/advertisement.

7. Power of the ECI

- a. The ECI should be given the power to de-recognize political parties and/or impose strict penalties upon the parties in case of non-compliance. In case a political party does not contest any election even after a significant period of time since inception (3 years or more), the ECI should have the power to deregister the party.
- b. **Scrutiny of the Candidates' election expenditure:** The ECI should work with the IT dept. to scrutinize the election expenditure statements submitted by the winners of the elections. The same kind of scrutiny could also be undertaken with the affidavits submitted by the candidate during elections. The ECI should have the power to take up this scrutiny 'suo moto' in association with the IT Dept.

References:

1. <http://220.227.161.86/27383reaserach16903-aapp.pdf>
2. <http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf>
3. <http://lawcommissionofindia.nic.in/lc170.htm>

About ADR and NEW

The **National Election Watch (NEW)** is a nationwide campaign comprising of more than 1200 NGO and other citizen led organizations working on electoral reforms, improving democracy and governance in India. The National Election Watch is active in almost all states of India and has done election watch for all states and Lok Sabha elections since 2002. ADR, along with couple other organizations, won the PIL in Supreme Court in 2002 to making disclosure of educational, financial and criminal background of electoral candidates mandatory.

Association for Democratic Reforms (ADR) is a non-political, non-partisan and a non-governmental Organization whose PIL filed in Dec 1999 culminated in a Supreme Court order on Mar 13, 2003 requiring disclosure of criminal, financial and educational background of all contesting candidates. Since then ADR has done Election Watches in almost all State Assembly and Lok Sabha elections. It continues to work towards strengthening democracy and governance in India by focusing on fair and transparent electoral and political processes. It is currently conducting election watch in all states going for assembly polls.

Appendix

ADR/NEW's views on Political Finance and the 255th Report of the Law Commission of India

March 2015

1. ADR/NEW agree with and support the Election Commission's views in para IX of the "*Background Paper on Election Finance and Law Commission's Recommendations*", March 2015, particularly the following:

"The Commission has thus for taken the stand that unless radical reforms are carried out in election campaign and political finance, state funding should not be allowed, as it will not be possible to prohibit or check candidate's own expenditure or expenditure by others over and above that which is provided by the State."

In the context of the Election Commission's view that "The Commission is open to idea of expanding the in-kind subsidy for the election campaign, with simultaneous reforms for transparency and accountability of parties and candidates," ADR/NEW would like to reiterate the utmost necessity of "simultaneous reforms for transparency and accountability of parties and candidates."

This reiteration is necessary based on the experience of how the much-cited Indrajit Gupta Committee Report has been used over the years. Without exception, all mentions and discussions of the Indrajit Gupta Committee Report, appears to overlook the opening paragraph of the "Conclusion" of this report which says, "Before concluding, the Committee cannot help expressing its considered view that *its recommendations* being limited in nature and confined to only one of the aspects of the electoral reforms may bring about *only some cosmetic changes in the electoral sphere*. What is needed, however, is an immediate overhauling of the electoral process whereby elections are freed from evil influence of all vitiating factors, particularly, criminalisation of politics. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullyng the

purity of electoral contests and effecting free and fair elections. Meaningful electoral reforms in other spheres of electoral activity are also urgently needed” (Emphasis added).

It is worth pointing out the “considered view” of the committee of the need for “immediate overhauling of the electoral process” to eliminate the “evil influence of all vitiating factors, particularly, criminalisation of politics”, and that state funding “*may bring out only some cosmetic changes.*” The committee’s backing of “the idea of state funding of elections on principle, (and) stating that “The Committee see full justification constitutional, legal as well as on ground of public interest, for grant of State subvention to political parties, so as to establish such conditions where even the parties with modest financial resources may be able to compete with those who have superior financial resources” has to be seen in the light of the opening paragraph of the “Conclusion”.

Given the unequivocal and “considered view” of the Indrajit Gupta Committee and the experience since that report was issued, it must be said that there seems to be more than enough reason to say that the “simultaneous reforms for transparency and accountability of parties and candidates” suggested by the Election Commission should be made a **pre-requisite** for any additional state support.

This is exactly what has been stated in para X of the Background Paper on Election Finance and Law Commission’s Recommendations, March 2015, which says “The Law Commission Report has advised that any reform in state funding should be ***preceded by*** reforms such as the decriminalisation of politics, the introduction of inner party democracy, electoral finance reform, transparency and audit mechanisms, and stricter implementation of anti-corruption laws so as to reduce the incentive to raise money and abuse power” (Italics added).

To be “preceded by” and being a “pre-requisite” convey exactly the same sense at least in this context.

Lest this be considered an overstatement, attention is invited to the reaction (or lack thereof) of the six national political parties to a decision of a full bench of the Central Information Commission (CIC) as far back as June 03, 2015, declaring six national political parties (BJP,

Congress, NCP, BSP, CPM, and CPI) as public authorities under the RTI Act. None of the six parties have complied with the decision of the CIC. What is more, all the six parties have blatantly defied the CIC by ignoring several notices by the CIC asking the parties to appear before it and explain the reasons for non-compliance. None of the parties has even challenged the CIC's decision in any court of law. The matter is still unresolved at the time of writing this note.

Looked at in the above background, the detailed discussion on the 13 issues listed in in para X of the Background Paper on Election Finance and Law Commission's Recommendations, March 2015, in the context of state funding of elections seems somewhat premature though it is, without doubt, extremely important in its own right.

2. In this context, it is felt very strongly that the expression "state funding" is not only a misnomer but is even misleading. It might be considered merely a matter of perception but it cannot be denied that perceptions play a very important role in matters such as elections and even in entire human activity. The expression "state" conveys an impersonal impression of a faceless and diffused entity usually referred to, in common parlance, as the "government".

It is proposed that the expression "state funding" be replaced by "**public funding**". It may well be described as a semantic change but it is believed that it will create a perception which is more in tune with reality which is that IF political parties were to be provided with funds by the State, the funds would, in reality, be those that have actually been collected from the public and are, in fact, owned by the public, though held in trust by the State or the government, to be spent in public interest.

3. ADR/NEW's views on the second chapter of the 255th report of the Law Commission of India, titled "*Election Finance Reform*", are given below.

This chapter titled "*Election Finance Reform*" is the most important one of the report. There are many indicators of the importance of this chapter. One, it is the first substantive chapter. Two, it is the longest chapter in the report comprising almost 31 per cent of the report (It is 64 pages long, the second-longest being 29 pages). It deals with the issue of election finance very comprehensively, listing out the current law on election finance and the need for reform. This is

followed by a listing and discussion of the current laws regulating election expenditure, contributions, and disclosure. Next is a comparative analysis of electoral expenditure, disclosure, and contribution laws from some of what are considered more mature democracies, United Kingdom, Germany, the USA, Australia, Japan, and the Philippines, followed by a comment on state funding of elections. The chapter concludes with comprehensive set of recommendations.

A very important part of this chapter is the section titled '*Understanding the reality of election financing today*'. In this section, the Commission makes very significant, and realistic, observations, some of which are worth reproducing in full.

“Although there are legal provisions limiting election expenditure for candidates and governing the disclosure of contributions by companies to political parties, the same is not properly regulated, either due to loopholes in the law, or improper enforcement” (Para 2.27.1).

“This is evident from the 2001 Consultation Paper of the NCRWC (National Commission to Review the Working of the Constitution) on Electoral Reforms, which estimates that actual campaign expenditure by candidates is '*in the range of about twenty to thirty times the said limits.*' In fact, one of the major concerns regarding expenditure and contribution regulation is that the apparently low ceiling of candidate expenditure increases the demand for black money cash contributions and drives campaign expenditure underground, causing parties to conceal their actual source of funds and expenditure” (Para 2.27.2).

“Therefore, there is clearly under reporting of election expenditure and opacity of political contribution. Part of the explanation lies in the lacunae in the law, and part in black money and poor enforcement” (Para 2.27.6).

“There are various loopholes in the laws regarding election expenditure, contribution and disclosure” (2.27.7).

“(M)ost importantly ... the subject of regulation under Section 77 of the RPA only covers individual ‘candidates’, and not political parties” (2.27.7).

“(R)egarding political contribution, the Rs. 20,000 disclosure limit can be easily evaded by writing multiple cheques below Rs. 20,000 each, or giving the money in cash. Nor is the profit-linked contribution limit of 7.5% a significant restriction for large companies ... while the law creates incentives for disclosure vide tax exemptions, it can be outweighed by the disincentive created by the loss of anonymity, especially given that in many instances big donors support multiple parties, or change their support, and do not want this information to be disclosed for fear of reprisal” (Para 2.27.12).

“(D)isclosure norms need to be strengthened ... (T)he ECI’s transparency guidelines do not have statutory authority and there is no legal consequence for non-compliance. Further, unlike many of the countries ... political parties and candidates file their returns with the ECI, without putting up the information online (on the ECI’s website) or making it easily available for public inspection (barring an RTI). This is essential to bring about transparency in the public domain and to let the voters know the donors, contributions and expenditures of the parties and candidates. Moreover, in many cases such as compliance with section 29C of the RPA (regulating political party disclosure) the only penalty for noncompliance is losing the income tax exemption. This is not a significant enough deterrent to parties” (Para 2.27.14).

The primary rationale followed by the Commission is that “Disclosure is at the heart of public supervision of political finance.” Ensuring disclosure, according to the Commission, “requires strict implementation of the provisions of the RPA, the IT Act, the Company Act, and the ECI transparency guidelines, which need to be given statutory backing.” In addition, the evasion or dilution of disclosure “has to be tackled through a stricter implementation of the anti-corruption laws and RTI and improved disclosure norms.”¹

¹ This sounds ironic when the highest authority for implementing the Right to Information Act, the Central Information Commission (CIC) says that it “is bereft of the tools to get its orders complied with.” See CIC’s decision of March 16, 2015 regarding non-compliance of CIC’s order declaring six national political parties as public authorities under the RTI Act

The essence of the recommendations is to amend various laws, the Representation of the People Act (RP Act), the Income Tax Act, and the Companies Act. The most significant amendments suggested, as could be expected, are to the RP Act. Some of the major recommendations are the following:

- The accounts of political parties should be “audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General.” This differs from the current practice where political parties choose their auditors entirely on their own.
- Today, political parties are not required to disclose the source of any contribution or donation which is less than Rs.20,000. There are instances of parties who declare donations worth hundreds of crores (yes, hundreds of crores), claim and get income tax exemptions on that, and do not disclose the source claiming that each of the donations was less than Rs.20,000. The report recommends that political parties “disclose such particulars (the names, addresses and PAN card numbers of these donors along with the amount of each donation) even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or 20 % of the party’s total contributions, whichever is less.” It recommends consequential amendments to be made to the Conduct of Election Rules and the Income Tax Act.
- Political parties today are very lax about submitting their election expenditure statements and the Election Commission does not have any explicit powers to take any action or discipline the defaulting parties. As a matter of fact, the Law Ministry, on behalf of the Government of India, stated in an affidavit submitted to the Supreme Court in a case about a year ago that the Election Commission, under Section 10-A, had power only to “receive” the statement of election expenditure of a *candidate* but not to “scrutinise” it! The Law Commission report recommends that “Express penalties, apart from losing tax benefits, should be imposed on political parties ...

which the six parties have ignored and not implemented even after 21 months have elapsed since the order was issued on May 03, 2013. The March 16, 2015 order of the CIC can be seen at http://www.rti.india.gov.in/cic_decisions/CIC_CC_C_2015_000182_M_149924.pdf, and the original May 03, 2013 decision can be seen at http://www.rti.india.gov.in/cic_decisions/CIC_SM_C_2011_000838_M_111223.pdf.

for the non-compliance with the disclosure provisions of proposed section 29D of the RPA. This should include a daily fine of Rs. 25,000 for each day of non-compliance, with the possibility of de-registration if the default continues beyond 90 days. Further, ECI may levy a fine of up to Rs. 50 lakhs if it finds any particulars in the party's statements as having been falsified."

- The Commission makes significant observations on the functioning of electoral trusts. It recognises that while "The IT Act has been amended to provide for tax relief on donations to the electoral trusts, setup for the sole purpose of making donations to political parties and ... the ECI regulates electoral trusts as well through its 'Electoral Trust Companies' scheme ..., there is no disclosure provision under the RPA corresponding to the changes in the income tax laws. Additionally, the only penalty prescribed non-submission of an annual report of contributions to the ECI as per the prescribed format (detailing the names and addresses of donors and donations given to parties), before the due date of filing of tax returns is that 'adverse notice shall be taken' of the failure to comply with the instructions." The Law Commission therefore recommends introduction of a new chapter pertaining to the 'Regulation of Electoral Trusts', to provide for the regulation of electoral trusts with appropriate penal provisions for enforcement in case of default.

All of the above recommendations and observations of the Law Commission of India are praiseworthy and ADR/NEW whole-heartedly endorse them. There are two issues on which some comment is considered necessary.

The *first* issue is of a **possible limit or cap on election expenditure by political parties**.

While the Law Commission has not made a specific recommendation in this regard, it has mentioned this issue at least at two places which clarifies what the Commission feels on this issue. The Commission observes in Para 2.28.3 of the report "Political parties are free to spend any amount as long as it is for the general party propaganda, and not towards an independent candidate. Thus, there is no ceiling on party expenditure. *It is recommended that the law on this point does not change, namely that there are no caps on party expenditure under the RPA* given that it would be very difficult to fix an actual, viable limit of such a cap and then implement such a cap. In any event, as the experience with section 77(1) discussed above reveals, in the 2009 Lok Sabha elections, on

average candidates showed election expenditures of 59% of the total expenses limit. There is no reason why the same phenomenon of under-reporting will not transpire amongst parties” (Italics added).

It is further observed, in para 2.28.4 of the report, that “Placing legislative ceilings on party expenditure or contributions will not automatically solve the problem, especially without putting in place a viable alternative of complete state funding of elections (which in itself is next to impossible right now). Our previous experience in prohibiting corporate donations in 1969 did not lead to a reduction in corporate donations. Instead, in the absence of any alternative model for raising funds, it greatly increased illegal, under the table and black money donations.”

The above two paragraphs read in the context of the chapter on Election Finance Reform, give the impression that the Commission is accepting lesser of the two evils, preferring expediency over doing the right thing. The observation of the Commission that “it would be very difficult to fix an actual, viable limit of such a cap” is debatable at best. It is admitted that it is indeed “very difficult to fix an actual, viable limit of such a cap” but one also has to go into the reasons why it is so difficult. The obvious reason that the Commission seems to have refused to see is lack of financial transparency in the functioning of political parties. IF political parties were transparent about their financial affairs or were made to be transparent, it would not only be possible but would actually be quite easy “to fix an actual, viable limit of such a cap.” How to make political parties financially transparent is the question that needs to be gone into to take this issue to its logical conclusion which regrettably the Law Commission has stopped short of doing. Some action is already on in this regard as mentioned in footnote 1 above.

Staying with the same issue, if as the Commission has observed, “(T)he experience with section 77(1) discussed above reveals, in the 2009 Lok Sabha elections, on average candidates showed election expenditures of 59% of the total expenses limit. There is no reason why the same phenomenon of under-reporting will not transpire amongst parties,” then why did the Commission not recommend removing the limits placed on election expenditure by candidates?

Having limits on the election expenditure of candidates and not having such limits on the election expenditure of political parties is obviously inconsistent. It would have been worthwhile for the Law Commission to make some recommendation, or at least some observations, to resolve this inconsistency rather than ignore or evade the issue.

The *second* issue is that of **political parties submitting the statements of their election expenditure to the Election Commission**. The Law Commission has recommended “giving statutory basis to the ECI’s ‘statement of election expenditure’ requirement introduced pursuant to the Supreme Court’s judgment in *Common Cause v UOI*, AIR 1996 SC 3081, and its transparency guidelines pertaining to election expenses by political parties through a new section 29F, which states as follows:

‘29F. Election expenses by political parties. — (1) Every political party contesting an election shall, within seventy five days of the date of an election to a Legislative Assembly of a State or ninety days of the date of an election to the House of the People, lodge with the Election Commission a statement of election expenditure, which shall be a true copy of such statement maintained by the party in consonance with the directions of the Election Commission” [*Para 2.31(b)9*], (p.63).

While this recommendation of the Law Commission is laudable as far as it goes, an anomaly remains. And that is of the period which this statement of election by political parties is supposed to cover. The *current provision* by the Election Commission specifies the period to be *from the date of the announcement of the election till the date of declaration of the result of the election*. And the statements have to be submitted “within” seventy five days of the date of an election to a State Assembly or ninety days of the date of an election to the Lok Sabha, as has also been accepted and recommended by the Law Commission. This creates the following two problems.

- It is well known and common knowledge and experience that political parties start preparing for elections, and thus start incurring expenditure on elections, well before the “date of announcement” of the election. This period can even be one or two years before an election is due. The statement of election expenditure from the date of the announcement of the election till the date of declaration of the result of the election is not really a true and correct account of

the entire expenditure on election incurred by a political party. A lot of expenditure is incurred in anticipation of an election which is completely missed by the current stipulation of the period of election expenditure.

- The second problem has to do with the fact that political parties are required to submit the election expenditure statement only within 75 or 90 days of the declaration of the result. It is known fact that public memory is short and therefore 75 and 90 are a long time for public memory in the context of election expenditure, particularly once the result is declared and a new government takes charge. Therefore no real “public” scrutiny of the election expenditure statement is either possible or done in the current dispensation.

The above problems can be overcome by the following two stipulations:

- Political parties be required to start submitting a statement of election expenditure beginning one year before an election is *due* for the State Assembly or the Parliament.
- In the period beginning one year before an election is due till the date of announcement of the election, political parties be required to submit the statement of election expenditure once a month, and during the period from the date of announcement of the election till the date of declaration of the result, they should submit the statement of election expenditure every alternate day or twice or three times during a week, similar to what individual candidates are required to do.

The above stipulations will make true public scrutiny of the election expenditure possible, which will make the election process a lot more open, free, and make it a more level playing field.

4. ADR/NEW would like make a more detailed submission on a future date.